

U.S. Department of Justice

*United States Attorney
Southern District of New York*

86 Chambers Street
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April 24, 2020

BY ECF

Honorable Paul A. Engelmayer
United States District Judge
40 Foley Square
New York, NY 10007

Re: *Reclaim the Records, et al. v. U.S. Department of Veterans Affairs*, 18 Civ. 8449 (PAE)

Dear Judge Engelmayer:

This Office represents the United States Department of Veterans Affairs (the “VA”) in this Freedom of Information Act (“FOIA”) case. We write pursuant to this Court’s Opinion and Order, Dkt. No. 39, which instructed the VA to “update the Court as records are released to Reclaim.” Dkt. No. 41. This Office has made available to Plaintiffs another version of the 5,017,533 records from the Beneficiary Identification Records Locator Subsystem (“BIRLS”) Death File that were previously released to Plaintiffs in April 2019. This newly produced file consists of the same data as the VA’s April 2019 production to Plaintiffs, except it also includes the “cause of death” field for a given veteran.

We also write to clarify one issue concerning this production and the prior April 2019 production to Plaintiffs. In this Court’s Opinion and Order, the Court stated that it “assume[d] that the data [produced in April 2019 to Plaintiffs] also included the veterans’ full names.” Dkt. No. 39 at 9 n. 3. However, as reflected in a joint letter submitted to the Court by the parties in March 2019, “[t]hrough the administrative process, Plaintiffs clarified that they sought the following fields from the BIRLS database, for the period 1850-2010: gender, birth date, death date, Social Security Number, cause of death, branch(es) of service, enlistment date(s), and release date(s).” *See* Dkt. No. 17 at 2. As full names was not one of the enumerated fields still sought by Plaintiffs, that specific subset of data was not produced to Plaintiffs in April 2019 (and is accordingly not included in today’s production to Plaintiffs).¹

As this case was previously handled by another AUSA, I recently became aware of this issue while working with the VA to prepare today’s production. To the best of my

¹ I also understand that, for these same reasons, the VA did not later raise any potential legal concerns with Plaintiffs or the Court regarding the production of full names to Plaintiffs. *See* 38 U.S.C. § 5701 (providing that “the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.”).

knowledge, Plaintiffs never objected to the exclusion of this field from the April 2019 production. The VA is also attempting to resolve this issue with Plaintiffs as it concerns further productions ordered by this Court. I sincerely apologize for any confusion.

We thank the Court for its consideration of this submission.


Respectfully,

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cc: Counsel of record (via ECF)

The Court thanks the Government for this update. As to the potential issue with regard to the inclusion / withholding of veterans' names, the Court requests that the parties file a joint letter by May 15, 2020 indicating either that there is no disagreement on this point or, if necessary, briefly setting forth the parties' respective views. SO ORDERED.



PAUL A. ENGELMAYER 4/27/2020
United States District Judge